

Appl. No. 09/216,545

Amendment dated May 27, 2004

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**Remarks**

Claims 40-49 are pending in the instant application. In the Office Action mailed January 30, 2004, the Examiner rejects claims 40-49 and the Examiner objects to the specification. Claims 40 and 49 have been amended. The amendments to the claims are supported by page 7, lines 4-6 and other portions of the Specification as filed. No new matter is added by these amendments. Based on the amendments and remarks made herein, Applicants respectfully request that the objection and rejections be withdrawn and that the application be passed to allowance.

**1. Paragraphs 1 of the Office Action Mailed January 30, 2004**

In paragraph 1 of the Office Action mailed January 30, 2004, the Examiner accepts the request filed December 18, 2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/216,545. The Examiner indicates that in response to a telephone communication with Alyssa Dudkowski during the first part of December 2003, the FINAL rejection mailed November 25, 2003, is withdrawn. The Examiner indicates that a NONFINAL action on the merits of the CPA is contained in the Office Action Mailed January 30, 2004. Applicants appreciate the Examiner's action in this regard.

**2. Paragraphs 2 and 5 of the Office Action Mailed January 30, 2004**

In paragraph 2 of the Office Action mailed January 30, 2004, the Examiner indicates that "[t]he amendment to page 22, lines 1-7 does not comply with 37 CFR 1.121 because such does not include the entire paragraph and the portion provided does not correspond textually to page 22, lines 1-7 as they appear in the application." In paragraph 5 of the Office Action mailed January 30, 2004, the Examiner indicates that "[t]he disclosure is objected to because of the following informalities: In the Summary of the Invention section, page 22 of the amendment, line 2, 'are' should be --is--, on line 5, 'panels' should be --panel-- and 'edges' should be --edge--." On page 5 of Applicants' "Amendment A" filed on July 8, 2003, Applicants intended to provide a new version of lines 1-7 on page 22 of the Preliminary Amendment filed on December 18, 2002 (not lines 1-7 on page 22 of the application as filed). Applicants would like to direct the Examiner's attention to paragraph 5 of the Office Action mailed on April 4, 2003 (Paper No. 24) in which the Examiner requested that amendments be made to

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"page 22 of the amendment" (not the application as filed). For the Examiner's convenience, Applicants have provided a new version of the Summary of Invention section.

### **3. Paragraph 4 of the Office Action Mailed January 30, 2004**

In paragraph 4 of the Office Action mailed January 30, 2004, the Examiner objects to the Abstract of the disclosure as still being too long (> 150 words). Applicants have further amended the Abstract herein.

### **4. Paragraph 5 of the Office Action Mailed January 30, 2004**

In paragraph 5 of the Office Action mailed January 30, 2004, the Examiner objects to claim 49 because of an informality, namely that in line 2 of subsection (f), "one" should be —on—. Applicants amend claim 49 herein in accordance with the Examiner's suggestion.

### **5. Rejection of Claims 40-47 and 49 as Obvious (Paragraphs 7-8 of the Office Action Mailed on January 30, 2004)**

In the Office Action mailed January 30, 2004, the Examiner rejects claims 40-47 and 49 as being unpatentable under 35 U.S.C. §103(a) over U.K. Patent Application 2 308 290 issued to Fernfors and assigned to SCA Mölnlycke AB (hereinafter "the SCA Publication") in view of PCT Patent Application WO 95/27463 issued to Larsson (hereinafter "the Larsson Publication"). The Examiner acknowledges that the SCA Publication does not teach the releasable bond as set forth in subsection (e) of claim 40, and the specifics thereof in the dependent claim 46. The Examiner believes the Larsson Publication teaches an article which includes a releasable bond in addition to a refastenable joint to improve reliability of maintaining the article in a prefasted condition. The Examiner believes "[t]o employ a releasable bond as taught by Larsson on the SCA device would be obvious to one of ordinary skill in the art in view of the recognition that such would improve the reliability of maintaining the prefasted condition during use and the desirability of such by SCA." With regard to claims 47 and 49, the Examiner believes the claims are product by process claims. The Examiner believes, in accordance with MPEP 2113, even if the product of the prior art combination is made by a different process, since the end product is obviously the same as the end product of claim 47, i.e. the end product is a weld whether ultrasonically formed or not, and claim 49, the claims do not distinguish over the prior art. This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

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In order to establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143. Independent Claim 40 is directed to *inter alia* a pant-like, prefastened, refastenable, disposable absorbent article. The absorbent article includes a pair of opposed elastic back panels which are respectively permanently attached to said side edges of said absorbent chassis in said back waist region of said absorbent article, the back panels extending laterally outward from the side edges. The absorbent article also includes a pair of opposed elastic front panels which are respectively refastenably attached to the side edges of the absorbent chassis in the front waist region of the absorbent article to provide a refastenable joint. Further, the front panel and the back panel on each side edge of the absorbent chassis are permanently connected together along a side seam to define a waist opening and a pair of leg openings and provide the pant-like, prefastened, refastenable, disposable absorbent article, the front panels extending laterally outward from the side edges. Claim 49 of the present invention is directed to *inter alia* a pant-like, prefastened, refastenable, disposable absorbent article. The pant-like, disposable absorbent article is made by a process which comprises:

- a) providing a continuous web of interconnected absorbent chassis;
- b) permanently attaching a pair of laterally opposed elastic back panels to said side edges of said absorbent chassis in said back waist region to provide a permanent joint, said back panels extending laterally outward from said side edges;
- c) refastenably attaching a pair of laterally opposed elastic front panels to said side edges of said absorbent chassis in said front waist region of said absorbent article to provide a refastenable joint, wherein refastenably attaching includes ultrasonically bonding said front panels to said side edges of said absorbent chassis in said front waist region, said front panels extending laterally outward from said side edges;
- d) selectively cutting said continuous web of interconnected absorbent chassis into discrete absorbent articles;

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e) folding each of said discrete absorbent articles about a fold line extending in a lateral direction through said crotch region of said article thereby positioning said front panels and said back panels in a facing relationship; and

f) permanently connecting said front panel and said back panel on each side edge of the absorbent chassis together along a pair of laterally opposed side seams to define a waist opening and a pair of leg openings and provide said pant-like, prefastened, refastenable, disposable absorbent article.

The SCA Publication describes a method of producing reclosable absorbent garments, and absorbent garments obtained by that method. In particular, the SCA Publication describes a single garment or a series of joined single garments that are produced in the closed state (See Page 3, lines 3-5). As set forth above, the Examiner acknowledges that the SCA Publication does not teach the releasable bond as set forth in subsection (e) of claim 40, and the specifics thereof in the dependent claim 46. However, the SCA Publication does not disclose the remaining features of the pant-like, prefastened, refastenable disposable absorbent article of the present invention. That is, the SCA Publication fails to disclose a pant-like, prefastened, refastenable disposable absorbent article that includes a pair of elastic opposed back panels that are permanently attached to the side edge of the absorbent chassis in the back waist region of the absorbent article, and extend laterally outward from the side edges. Instead, at Page 11, lines 11-15, the SCA Publication states when elastic material are used:

For example, although it has been described that surplus material 9 is left over line 6 for strips 8 and 13, in order that said strips will not break when the separation of zone '(c)' is carried out, the strips could be arranged to be elastic in said region instead and be laid relatively flat over said line 6. However, such an embodiment is not preferred.

As such, the SCA Publication clearly does not disclose a pant-like, prefastened, refastenable disposable absorbent article of the present invention that includes elastic front and back panels that extend laterally outward from said side edges. Instead, the SCA Publication teaches away from the claimed invention by stating that the strip (8) could be "elastic and be laid relatively flat over said line 6." (Page 11, lines 11-15). In this way, if the strip (8) is elastic and laid relatively flat over line 6, the strip (8) would not extend laterally outward from said side edges.

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Moreover, the Larsson Publication fails to correct the deficiencies of the SCA Publication. That is, the Larsson Publication fails to teach or suggest the pant-like, prefastened, refastenable, disposable absorbent articles as recited in the rejected claims. In particular, the SCA Publication does not teach or suggest a pair of elastic front and back panels that extend laterally outward from said side edges and the Larsson Publication fails to correct this deficiency. In fact, the Larsson Publication, at page 6, lines 9-11 teaches away from the claimed invention by describing that, "the front side parts of the pants-type diaper are joined to respective opposing rear side parts 9 and 10 by means of a fastener band 11," rather than via side panels.

Therefore, for at least these reasons, Applicants submit that independent claims 40 and 49 are patentable under 35 U.S.C. § 103 over the SCA Publication in view of the Larsson Publication and respectfully request that the rejection under 35 U.S.C. §103(a) be withdrawn. Likewise, Applicants respectfully submit that claims 41 – 48, which depend from independent claim 40, are patentable over the SCA Publication in view of the Larsson Publication for at least the reasons stated above.

Further, and with regard to dependent claim 47 and independent claim 49, the Examiner believes they are product by process claims. In particular, the Examiner states that in accord with MPEP 2113, "[t]he patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." Applicants submit that claim 47 is not a product-by-process claim. MPEP 2173.05(p) states that a product-by-process claim is "a product claim that defines the claimed product in terms of the process by which it is made." Claim 47 states, "[t]he absorbent article of claim 40 wherein said releasable bonds are ultrasonic bonds." Claim 47 does not claim the product in terms of the process by which it is made, it simply recites that the releasable bonds are ultrasonic bonds. Further, as stated above, the claimed products of claims 47 and 49 are not the same as or obvious from the products of the prior art. Neither the product of the SCA Publication, nor the product of the Larsson Publication, nor the product of the combined SCA Publication and the Larsson Publication include a pair of elastic front and back panels that extend laterally outward from the side edges.

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**6. Rejection of Claim 48****(Paragraph 9 of the Office Action Mailed on January 30, 2004)**

In the Office Action mailed January 30, 2004, the Examiner rejects claim 48 as being unpatentable under 35 U.S.C. §103(a) over the SCA Publication in view of the Larsson Publication as applied to claim 40 above, and further in view of U.S. Patent No. 5,685,873 issued November 11, 1997, to Bruemmer (hereinafter "the Bruemmer Patent"). The Examiner acknowledges that the SCA Publication and the Larsson Publication do not disclose a releasable bond defining a peel strength of no more than 1500 grams. The Examiner believes that this is equivalent to the maximum force allowing opening or unfastening of the bond. The Examiner believes that the Bruemmer Patent teaches fasteners having a maximum unfastening force of no more than about 1500 grams so as to permit an adult to open such fastener but prevent a child from doing so. The Examiner believes, therefore, to employ a releasable bond defining a peel strength of no more than 1500 grams on the SCA Publication device would be obvious to one of ordinary skill in the art in view of the recognition that such would allow intended opening by adults and the desirability of such by the prior art. This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

The Bruemmer patent is directed to a disposable absorbent garment including a pair of differentially stretchable ear members where each differentially stretchable ear member comprises a stretchable inner ear portion and a stretchable outer ear portion. A first fastening mechanism on each ear is releasably fastenable to the front of the article, and second fastenable members on the outermost portions of each stretchable ear are fastenable together at the front of the diaper when worn. In particular, at Column 4, line 55 – Column 5, line 4 the Bruemmer Patent teaches a snap fastener or other type of mechanical fastener, the primary purpose of which is to provide a childproof fastening system. Accordingly, the Bruemmer Patent teaches that the snap fastener should have a fastening force in the range of about 500 to about 1500 grams force.

As stated above, the SCA Publication alone or in combination with the Larsson publication fails to teach the claimed invention. Moreover, the Bruemmer Patent fails to correct for the deficiencies of these references. That is, the SCA Publication, the Larsson publication and the Bruemmer patent alone or in combination fail to teach or suggest the pant-like, prefastened, refastenable, disposable absorbent articles as recited in the rejected claim. In particular, the Bruemmer Patent does not teach a pair of front and back panels that are permanently connected together along a side seam and extend laterally outward from the side edges.

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Therefore, for at least these reasons, Applicants submit that claim 48 is patentable under 35 U.S.C. § 103 over the SCA Publication and the Larsson Publication in view of the Bruemmer Patent and respectfully request that the rejection under 35 U.S.C. §103(a) be withdrawn.

**7. Paragraph 11 of the Office Action Mailed on January 30, 2004**

Applicants have reviewed the references cited by the Examiner but not relied upon in rejecting the claims. Applicants submit that such cited references not disclose or suggest Applicants' claimed invention.

In conclusion, and in view of the remarks set forth above, Applicants respectfully submit that the application and the claims are in condition for allowance and respectfully request favorable consideration and the timely allowance of pending claims 40-49. If any additional information is required, the Examiner is invited to contact the undersigned at (920) 721-4558.

The Commissioner is hereby authorized to charge any prosecutorial fees (or credit any overpayment) associated with this communication to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such extension is requested and should also be charged to our Deposit Account.

Respectfully submitted,

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